90-1927

(1)

Supreme Court, U.S.
FILED
APR 24 1991
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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1990

STANLEY E. KORNAFEL

Petitioner,

-vs-

JACKSON M. STEWART, JR.
ASSISTANT DISTRICT ATTORNEY
AND
RONALD MILLS, SERGEANT
PROSPECT PARK POLICE DEPARTMENT

Respondents

PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals
For the Third Circuit

PETITION FOR WRIT OF CERTIORARI

STANLEY E. KORNAFEL
668 Mohawk Avenue
Norwood, PA 19074
Telephone: (215) 522-0533
Pro Se

QUESTIONS PRESENTED FOR REVIEW

Whether the Appeals Court can ignore or support a direct error of the District Court.

Whether courts should permit the negligence of government officials, acting without legal or lawful cause and not providing due process of law, to control a citizen's property until said citizen signs a release, not Court directed, absolving them of their prior negligence and coercion.

Whether the District Court, in stating "eventually returned," which covered three years, is proper interpretation of, and within, the Constitution's parameters and meaning of "Not deprive without first providing Due Process."

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Whitaker v. Board of Education of N.Y.
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STATEMENT OF GROUNDS FOR INVOKING JURISDICTION

Date of entry of judgement to be reviewed: 7-18-90.

Date of order denying rehearing: 2-4-91

Statutory provision believed to confer Court's jurisdiction to review the judgement by Writ of Certiorari:

28-USCA-2101 (c)

28-USCA-1254 (1)

42USCS-1983

USCA-4-5 and 14

Constitutional Provisions

Constitutional Law §786-787: The fundamental requirement of due process is the opportunity to be heard. Some kind of Hearing is required before a State may finally deprive a person of property interests.

Civil Rights §12.5 action under Civil Rights Statutes - Essential Elements - requisite state of mind.

USCA-4: The right of people to be secure in their effects against unreasonable searaches and seizures.

USCA-5: No person shall be deprived of property without due process of law.

USCA-14: No Sate shall deprive any person of property without due process of law nor deny to any person the equal protection of the laws.

28-USCA-1343: Due process prior to deprivation.

42-USCS-1983: Without due process and under color of law

STATEMENT OF THE CASE

Directed by Common Pleas Divorce Court Decree dated 12-10-85 to return property, Petitioner's ex-wife turned property over to Prospect Park Police Dept. Acting as an intermediary, the Prospect Park Police Dept. accepted the property on 3-2-86.

Petitioner was advised by the Prospect Park Police that the property had been sent to a ballistics lab and since there was no legal or lawful reason for holding the property its return would be no problem.

Petitioner was informed that the Police Dept. would send the District Attorney a note authorizing it's release and Petitioner could pick up the property at any time.

After approximately a year of much correspondence and numerous telephone calls to the Prospect Park Police Dept., the Ballistics Lab and the Assistant District Attorney, Petitioner was informed of the following:

The Ballistics lab could not release property without authorization from the Assistant District Attorney;

Prospect Park Police Dept. had not sent the authorization;

Assistant District Attorney would not authorize release of property without written permission from the Police Dept. and did not receive same;

Prospect Park Police Dept. then claimed they sent the letter of release.

Petitioner, unknowingly, misled and misdirected but, in blind good faith, waited and cooperated.

There was no criminal action or intent nor any Police cause of action and Petitioner was a peaceable citizen, neither suspect, nor charged, or cited and property was not confiscated nor taken in a search and seizure nor held with any cause and not under warrant.

Petitioner was never told property would not be returned until correspondence of Respondent Stewart, 2-18-87, making issue of Pa. R.C. 324.

Not being provided aid sought, Petitioner attempted return of property through the local District Justice in March, 1987, citing USCA 14, Penna. Constitution Sections 1, 2, 8, 21 & 26.

District Justice permitted Respondants NOT to testify; Refused to allow Petitioner to examine Respondants;

Refused to acknowledge Petitioner's statement of ownership of property; and Refused to accept Common Pleas Court Decree.

Petitioner appealed, 5-26-87, to Common Pleas Court citing USCA 14; Penna. Constitution Sections 1, 2, 8, 21 & 26; and #6 Municipal Organization's (McQuillin) § 24.01 and § 24.09. Upon dismissal on notations Petitioner submitted complying amended appeal, which was also dismissed on technicalities by a different judge on 2-23-89.

Petitioner, through an attorney, without Court action or direction, obtained property without redress on 3-28-89.

Petitioner presented case to U.S. District Court on 5-7-90 for remedy citing USCA 4, 5 and 28 USC1331, which was dismissed on 7-18-90.

The Court Order states that the property was eventully returned and damages sought were from the failure to timely return the property.

Failure to timely return did not include the resulting unnecessary Courts, attorney, cancelled work days and hours of efforts made by Petitioner.

The Court, stating "eventually returned," covered three years where Petitioner was deprived of property and civil rights, without cause, without first being provided any due process and where no legal action was necessary nor required by law.

The Order also stated that the Complaint was barred by a General Release signed in settlement of a prior State Court Action.

Release was not signed under, within or as a result of any Court Action and Petitioner did not sign the release as a settlement but only as demanded.

As Attorney R. Heller, Esq., stated to Petitioner he was told if the release is not signed, the property would not be returned

Petioner's signing of release was not any form of settlement but only result due to duress, coercion and last resort.

The Order states that complaint fails to state a due process claim for relief under 42USC1983 because Pennsylvania provides an adequate remedy citing Parrott V. Taylor 451US527.

This Case suggested by Court involves a person under government control and mishandling of property which

absolutely has no legal resemblance or comparative to Petitioner's causes for claims.

Pennsylvania remedy as order suggests is Pa. R. Criminal Procedure which states the remedy is provided whereon actions initiated by authorities has cause for possession and where direction of possession is not known.

Petitioner was not under government control or suspicion and no Officials at any time intitated any action.

Respondants knew proper ownership as property had been registered when purchased, and also by Police receipt from Petitioner's ex-wife and Petitioner's Divorce Court decree.

On 8-14-90 Petitioner filed with the U.S. Court of Appeals for a Rehearing citing 28 USC1292, 28UCS1331,

28 USC1343(A) 1, 2, & 3; and USCA 4, 5 & 14. The Petition for Rehearing was denied and filed 2-4-91.

Petitioner, for all reasons as explained, now files this Petition for Writ of Certiorari.

REASONS FOR ALLOWANCE OF WRIT

The Court of Appeals, in denying a rehearing and supporting the U.S. District Court, offers suppression of the U.S. 4th, 5th and 14th Amendments of the Constitution in their entirety, thus compromising the civil rights of a peaceable citizen as stated in:

USCA 4, 5 and 14

28-USC-1331

28-USC-1343

42-USC-1981

42-USC-1983

The District Court's order is totally contrary to the 4th, 5th and 14th Amend. and 42-USC-1983 as Petitioner was refused aid as required within the Amendment of equal protection, was deprived of property without due process of law and under color of law.

Respondents held property with no legal or lawful reason or Court sanction yet under color of law and continuously misled Petitioner advising that there would be no problems in property's return.

Respondents later changed minds at another time insisting on PA. Rule 324. The again changing their minds stating ultimatum and returning property without court direction.

Due process is prior to deprivation - USCA Court Amend. 5 Hodel V. Virginia Surface Min. 452US264, 69LED2d.1.

Constitutional Law § 786, 787

Civil Right § 12.5

42USCS § 1983

Bodie V. Conn. 401US371

Goldberg V. Kelly 397US254

Frientes V. Shevin 407US67

District Court barred complaint contending a release was signed by Petitioner in settlement of a prior court action as contended also by Respondents.

This is a deliberate error and was challenged in Appeals Court noting release was not within any court parameters, not under court stamp and that lower court records would not show any directive or order other than "dismissed on technicalities."

While mere conclusory allegations of fraud will not suffice, statements of time, place and nature of alleged fradulent activities will. Fed. Rules Civ. Proc. rule 9(b), 28-USCC Bosse v. Crowell Collier and Macmillan, 565 F.2d602.

Under Alabama law, violation of a regulatory statute intended for benefit of public renders a contract void and unenforceable. International Dairy Queen, Inc. v. Bank of Wadley, 407 F.Supp. 1270.

District Court stated "effect of release must be determined from ordinary meaning of its language" but did not consider the events and circumstances forcing such.

Respndents, through manipulative force, under color of law provided the Petitioner with ultimatum of either signing the release or not having his lawful and legal property returned.

There was no prior court involvement in this release nor court knowledge of it. Prior Court's denials of constitutional rights and priviledges,

plus continuous misleading and denial of equal protection and lack of aid compelled Petitioner to sign release under stressful duress and demeaning intmidation.

Deprivation of a property or liberty interest in an arbitrary or capricious manner or for arbitruary or capricious reasons amounts to a denial of due process. 42-USA §§ 1981; USCA 5 and 14 Whitaker v. Board of Hight Education of N.Y., 461 F.Supp. 99.

Parties do not have a right to obtain a settlement through duress, harassment or overbearing conduct. Lewis v. S. S. Baune, 534 F.2d 1113

A district court must reject a settlement agreement no matter how acceptable it may otherwise be, if it is not free from collusion or fraud. Maher v. Zapata Corp., 714 F.2d 436

U.S. District Court's order directs that complaint fails to state a due process claim uner 42 USC 1983 because PA provides remedy and cites 451US527, Paratt v. Taylor and 42 PA CSA 8542 (b) (2). District Court's direction was for criminal actions.

Decision of U.S. District Court to use 42 PA Cons. Stat. Ann. 8542 (b) (2) is in error as statute is criminal procedure and covers improper mishandling of property confiscated or taken by search and seiure and/or regarding citizens within government care or holding.

This case is not within criminal law as:

To the contrary, Respondents did not initiate any action, did not have cause to retain possession and possession was not the result of their actions;

To the contrary, property was not lost nor damaged and Respondents had direction for ownership;

To the contrary, Petitioner was not under any government suspicion, custody or action;

Thus 42 PA CSA 8542 did not apply.

District Court barred complaint by Statute of Limitations.

Respondents had not stated, nor shown, to have provided the returning of Petitioner's property prior to the release being signed yet Petitioner did obtain property on March 27, 1989, but not as a result of Court aid, direction or order.

Under PA law, a claim of negligence is stated by alleging that there is a duty to protect, and that

there has been a breach of that duty which was the proximate or legal cause of the injury. Miller v. U.S., 530 F.Supp. 611.

Party is liable for injury caused by its failure to perform imposed duty unless that party has lawfully delegated duty and given up all control and supervision arising out of that duty. Price v. U.S., 530 F.Supp. 1010.

Petitioner did file for redress on May 1, 1990.

This was within 2 years of obtaining property on March 27, 1989.

This was an ongoing violation of obstruiction of justice, misleading of a peaceful citizen and obvious violation of constitutional rights and privileges.

In case of continuing violation of Civil Rights Act, plaintiff may file charges or institute action at any time

during which alleged violation has taken place and such charge or action will not be barred by applicable statute of limitations, even though some acts complained of occurred outside of limitations period. 42 USCA § 1981 Guilday v. Dept. of Justice, 451 F.Supp. 717.

A statute of limitations should not begin to run as to any act until the course of conduct has ended. Korry v. International Tel. & Tel. Corp., 444 F.Supp. 193.

CONCLUSION

This case contains discrepancies in Fraud, FRCP 9 (B) and Obstruction of Justice, 18 USCA 1503,

did occur and though were not addressed, should be.

The District Court's order stating "property was eventually returned" covered 3 years. In what manner is a citizen to rely on due process - after 3 years, after 10 years, or after 25 years Where is the responsibility for protection of abuse of power?

It is Petitioner's intention that the U.S. Court of Appeals has sanctioned such a departure from usual judicial proceeding by lower court as to call for an exercies of this Court's power of supervision.

The U.S. Court of Appeals has allowed an important question of Federal Law, decided in District Court, to pass which has not been, but should be, settled by this Court.

This case presents fundamental deterioration of the Constitution's baasic framework which directly affects peaceable citizens nationwide, thus requiring the Supreme Court's challenge in supporting its meaning of Civil Rights and fairness in law.

It is in this fairness that Petitioner pleads this honorable Court to grant a Writ of Certiorari

STANLEY E. KORNAFEL
668 Mohawk Avenue
Norwood, PA 19074
Telephone: (215) 522-0533
Pro Se

APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STANLEY KORNAFEL	:	CIVIL ACTION
	:	
v.	:	NO. 90-3121
JACKSON M. STEWART, ET. AL.	:	

O R D E R

AND NOW, this 16th day of July, 1990, after consideration of defendant Stewart's motion to dismiss (docket no. 4), defendant Mills' motion to dismiss (docket no. 8), and the responses thereto, it is hereby Ordered that both motions are GRANTED and this action is DISMISSED WITH PREJUDICE in its entirety. Additionally, plaintiff's request for motion by default (as to defendant Ronald Mills) (docket no. 6) is DENIED as moot, in light of dismissal of platintiff's complaint in its entirety.

to Stewart's motion as Exhibit B), see Buttermore v. Aliquippa Hospital, 522 Pa. 325, 561 A.2d 733, 735 (1989) (effect of release must be determined from ordinary meaning of its language); (b) the complaint fails to state a due process claim for relief under 42 U.S.C. § 1983 because Pennsylvania provides an adequate state remedy, see Parratt v. Taylor, 451 U.S. 527, 543-44 (1981); see also 42 Pa. Cons. Stat. Ann. § 8542(b)(2) (exception to governmental immunity for losses sustained when municipality has custody or control of personal property); and (c) the complaint is barred by the statute of limitations, as discussed in defendant's response.

3. On June 26, 1990, Kornafel moved for the entry of default against

1. This action arises from an alleged "seizure" of plaintiff Kornafel's handgun. Kornafel seeks $76,000 for damages resulting from defendants' alleged failure to timely return the gun to him. The gun was eventually returned to Kornafel.

2. It would not be productive to discuss the facts of this case in any detail. It is sufficient to state that the court has granted both defendants' motions to dismiss essentially for the reasons stated in defendant Stewart's response, which are summarized briefly as follows: (a) the complaint is barred by a general release Kornafel signed in settlement of a prior state court action arising out of the same events (attached

defendant Ronald Mills for failing to timely respond to the complaint. In light of the court's conclusions on defendant Stewart's motion to dismiss, which apply equally to the purported case against Mills, the court has denied as moot the motion for default against Mills.

AND IT IS SO ORDERED

_____

Clarence C. Newcomer, J.

ENTERED 7- 18- 90

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 90-1609

STANLEY E. KORNAFEL,

Appellant

v.

JACKSON M. STEWART, JR., ASST. DISTRICT ATTORNEY AND RONALD MILLS, SERGEANT, PROSPECT PARK POLICE DEPARTMENT

(D.C. Civ. No. 90-03121)

SUR PETITION FOR PANEL REHEARING WITH SUGGESTION FOR REHEARING IN BANC

PRESENT: SLOVITER, Chief Judge, BECKER, STAPLETON, MANSMANN, GREENBERG, HUTCHINSON, SCIRICA, COWEN, NYGAARD, AND ALITO, Circuit Judges.

The petiton for rehearing filed by Appellant Stanley E. Kornafel, having

been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges in active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is DENIED.

BY THE COURT,

_____

Circuit Judge

DATE: FEB. 4, 1991

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 90-1609

STANLEY E. KORNAFEL,

Appellant

v.

JACKSON M. STEWART, JR., ASST. DISTRICT ATTORNEY AND RONALD MILLS, SERGEANT, PROSPECT PARK POLICE DEPARTMENT

On Appeal From the United States District Court for the Eastern District of Pennsylvania
(D.C. Civil No. 90-03121)
District Judge: Honorable Clarence C. Newcomer

Submitted Under Third Circuit Rule 12(6)
January 2, 1991

Before: BECKER, SCIRCA AND NYGAARD, Circuit Judges

JUDGMENT ORDER

After consideration of all contentions raised by appellant, it is

ADJUDGED AND ORDERED that the judgment of the district court be and is hereby affirmed.

Costs taxed against appellant.

BY THE COURT,

_____
Circuit Judge

ATTEST:

_____
Sally Mrvos, Clerk

DATED: JAN. 4, 1991